

VZCZCXRO9030
PP RUEHHM
DE RUEHHI #0239/01 0370945
ZNR UUUUU ZZH
P 060945Z FEB 07
FM AMEMBASSY HANOI
TO RUEHC/SECSTATE WASHDC PRIORITY 4544
INFO RUEHHM/AMCONSUL HO CHI MINH 2476

UNCLAS SECTION 01 OF 04 HANOI 000239

SIPDIS

SIPDIS
SENSITIVE

E.O. 12958: N/A

TAGS: [PGOV](#) [AMGT](#) [PREL](#) [CMGT](#) [KFRD](#) [VM](#)

SUBJECT: HCMC CONSULAR DISTRICT: GVN ASSERTS RIGHT TO CONTROL CONGEN CONTACTS

REF: A) 06 HCMC 1483; B) 06 HCMC 246; C) 2/12/97 ANDERSON LETTER; D)

2/20/97 PHUC LETTER

11. This is an action cable for EAP and L/EAP. Mission Vietnam requests Department approval of a draft diplomatic note in para 10.

12. Summary: In recent interactions, GVN officials -- citing the 1963 Vienna Convention on Consular Affairs -- are challenging the right of Consulate General Ho Chi Minh City officers to meet with Vietnamese citizens without explicit prior permission. The GVN justification for this position also highlights our long-standing bilateral disagreement over the extent of the HCMC consular district and treats the two as related issues. This cable reports our most recent exchanges and requests Department approval of the text of a diplomatic note we would like to present to the GVN, which would give USG positions on both the extent of the ConGen HCMC consular district and our consulate officers' right to meet with Vietnamese citizens. Septel will propose a medium-term strategy to address the consular district issue in conjunction with our desire to establish APP Danang and Vietnam's parallel interest in expanding its consular presence in the United States. End Summary.

13. (SBU) In a diplomatic note dated January 17, 2007, the Ho Chi Minh City (HCMC) External Relations Office (ERO) again complained about Consulate General meetings with private Vietnamese citizens outside of HCMC both without the ERO's explicit prior approval and without GVN representatives present. According to the GVN, under the Vienna Convention, it must approve and determine conditions for any activity "outside of our recognized consular district," which -- the GVN asserts -- is limited to the municipality of HCMC. The January 17 note responds to a January 11 note we sent after an initial GVN complaint on January 4 about a trip to Dong Nai Province in December 2006. On that trip, we sought private meetings with the local bishop and the family of two imprisoned political activists (Ref A). Our response to the initial note was drawn from Department-cleared language from a similar exchange in 2006. (Texts of these three notes are presented in para 9 below.)

14. (SBU) As background, on February 12, 1997, Charge Desaix Anderson presented a letter concerning the establishment of ConGen HCMC in which he expressed the understanding of the USG that "subject to notification of the authorities of the receiving state in each case, personnel assigned to the United States Consulate General Ho Chi Minh City may perform official duties in Thua Thien Province and all Socialist Republic of Vietnam territory southward in the same manner as official duties performed in Ho Chi Minh City." On February 20, 1997, MFA Assistant Minister Bui Hong Phuc, responding to Anderson's letter, stated that, "regarding consular activities outside consular district, on a case by case basis when need arises, after the sending country notifies the receiving country and receives confirmation from the sending country, consular officers of the Consulate General of the sending country may perform consular functions outside its consular district." The letter also stated that the consular district of ConGen HCMC is limited to that city.

15. (SBU) The GVN has sought periodically to restrict access by consulate officers to pursue visa fraud investigations outside HCMC (Ref B). This is the first time in the last three years, however, that the GVN has claimed formally that we cannot hold meetings outside of HCMC without the explicit approval of, and possible attendance by, local authorities. (In 2004, ConGen personnel were physically blocked from driving to the Central Highlands following the disturbances at Easter.) The DCM discussed the January 2007 exchange of notes concerning the Dong Nai visit with MFA Americas Department Director General and staff. GVN officials reiterated that the GVN view is that the consular district of ConGen HCMC is limited to HCMC only and that this creates distinctions in the way that local authorities interact with ConGen officials operating "out of district."

16. (SBU) In separate discussions with GVN officials in HCMC, these officials argued that the Vienna Convention makes no distinction between official and private Vietnamese. All USG access to Vietnamese citizens must be done with the "consent of the receiving state" in the GVN view. The ERO officials also made note of the fact that the meetings in question took place outside the "recognized consular district." In the GVN view, the exchange of letters required that the GVN approve of any USG program outside of HCMC. ERO officials said that by "contact," they mean any form of communication with Vietnamese citizens, including phone conversations, letters and meetings. ConGen HCMC officials immediately rejected this interpretation, stressing that the Consulate General routinely provides timely notification in accordance with the 1997 bilateral exchange of letters.

17. (SBU) In our reading, the ERO's assertion that contact with Vietnamese citizens is not among consular functions and that GVN minders can be present in all our meetings outside HCMC cannot be supported by a reading of the 1997 exchange of notes establishing the consulates general. Also in Mission Vietnam's view, the GVN

HANOI 00000239 002 OF 004

position is an unacceptable distortion of the Vienna Convention. With the issuance of the GVN's January 30 note, it is clear that Hanoi is focused on this issue and intent on maintaining its position. Mission proposes a response based on recent cleared language and the 1997 Anderson letter.

18. (SBU) For clarity, we have included below exchanges of letters and diplomatic notes from January, 2007, followed by our suggested reply to the latest exchange. By septel, we will propose a medium-term strategy for clarifying consular district issues and the rights of consulate officers. This strategy would seek to capitalize on the interest of both the United States and Vietnam in creating new consulates in the other country.

19. (SBU) Following is the text of the 2007 exchange of diplomatic notes:

On January 4, the HCMC ERO sent this note to ConGen HCMC:

complimentary opening...according to feedback from (the) Dong Nai provincial ERO, when visiting the family of Doan Van Dien, Doan Huy Chuong in Phu Ngoc commune, Dinh Quan district, and Bishop Nguyen Chu Trinh, the delegation took the liberty of meeting with them privately without the participation of the guiding official of the provincial ERO. This was not in conformity with the diplomatic note 5605/NV-LS-QHLS dated December 19, 2006 of the ERO in HCMC which requests the Consulate Political Officer to contact Dong Nai provincial ERO for guidance on the visit. The ERO in HCMC requests the Consulate General, when working with Vietnamese functional authorities and meeting with Vietnamese citizens, to follow strictly the schedule and the instruction of local officials."

January 11, CONGEN HCMC, in coordination with Embassy Hanoi, replied to the HCMC ERO's note as follows:

complimentary opening ... the Consulate General appreciates the Office's continued willingness to assist officers of the Consulate General traveling outside of Ho Chi Minh City and expresses its appreciation to the Office of External Relations of Dong Nai

Province for facilitating the visit of the Consulate General's Political Officer and looks forward to additional opportunities for cooperation. The Consulate General confirms that in regards to the December 20 visit, no assistance was required from the Office or from the Office of External Relations of Dong Nai Province for meetings with non-official Vietnamese individuals. In regards to carrying out its functions beyond Ho Chi Minh City, the Consulate General shall continue to operate according to the 1997 exchanges of letters establishing the consulates general in Ho Chi Minh City and San Francisco. complimentary close.

On January 17, the HCMC ERO sent this reply:

complimentary opening...and would like to express its opinion regarding the Consulate General diplomatic note 005/07 dated January 11, 2007 as follows:

According to the 1963 Vienna Convention on Consular Relations, the Consulate General's contact with Vietnamese citizens is not among consular functions.

Regarding working trips outside Ho Chi Minh City, the 1963 Vienna Convention on Consular Relations and the 1997 exchange of letters clearly stated:

-1. Article 6 of the Vienna Convention regulates consular functions outside consular district. In special circumstances and subject to approval by receiving country, consular officer may carry out his/her consular functions outside his/her consular district.

-2. An official letter dated February 20, 1997, of Vietnam MFA's Consular Chief Bui Hong Phuc responding to Charge de Affairs Desaix Anderson's letter dated February 12, 1997, defines that, regarding consular activities outside consular district, on a case by case basis when need arises, after the sending country notifies the receiving country and receives confirmation from the sending country, consular officers of the Consulate General of the sending country may perform consular functions outside its consular district. Complimentary closing.

On January 30, the MFA sent the following to all diplomatic missions:

The Ministry of Foreign Affairs of the Socialist Republic of Vietnam presents its compliments to Foreign Diplomatic Offices, Foreign Consular Offices in Vietnam and would like to have your attention to the followings:

On May 9, 2001, the Ministry of Foreign Affairs of the Socialist Republic of Vietnam sent out diplomatic note No. 142/NG-LS to Foreign Diplomatic Offices, Foreign Consular Offices in Vietnam notifying stipulations of Vietnam on principles and procedures to

HANOI 00000239 003 OF 004

ask for permission for consular officers to perform consular functions outside their consular districts. Unfortunately during the recent time, a number of Foreign Consular Offices, especially in Ho Chi Minh City, have performed activities in areas outside their consular districts without following stipulations notified at the above mentioned diplomatic note.

In accordance with Vietnamese laws and international laws and practice, the Ministry of Foreign Affairs would like to repeat that it is always willing to facilitate (the work of) Foreign Consular Offices in Ho Chi Minh City and other provinces and cities when they need to operate outside their consular districts, but they need to carry out following stipulations:

(Article 1) The consular district of a Foreign Consular Office in Vietnam was defined at time of agreement on establishing of that Consular Office and was stated clearly in the Consular Approval Note issued to the head of the Consular Office. Consular districts of Foreign Consular Offices in Ho Chi Minh City include urban area and suburbs. For Consular Offices in other cities, their consular districts also include urban area and suburbs of these cities.

(Article 2) In accordance with 1963 Vienna Convention on Consular Relations, consular officers are allowed to perform their consular functions within their consular districts.

(Article 3) In necessary cases, only when permitted by Vietnamese Government, consular officers are allowed to perform their consular functions outside their consular districts. Procedures for permissions are as followed:

(Sub-Article 3.1) For Consular Offices that have headquarters in provinces and cities from Thua Thien Hue northward: Embassies in Hanoi send diplomatic notes to the Consular Department of Ministry of Foreign Affairs. For Consular Offices that have headquarters in provinces and cities from Da Nang City southward: Consular Offices directly send diplomatic notes to the Ho Chi Minh City External Relations Office.

(Sub-Article 3.2) In the diplomatic notes, specific requirements should be stated clearly including times, dates, destinations, contents of operations, names of consular officers assigned to perform consular functions, mean of transportation (if available).

(Sub-Article 3.3) Within 05 day timeframe, Ministry of Foreign Affairs (Consular Department, Ho Chi Minh City External Relations Office) will consider and respond by diplomatic notes (if approved or not). Consular officers are allowed to perform consular functions outside of their consular districts only when approved by Ministry of Foreign Affairs.

(Sub-Article 3.4) In urgent or special cases, Foreign Diplomatic Offices, Foreign Consular Offices may send their requests by fax; official diplomatic notes will follow later. Consular Department and the Ho Chi Minh City External Relations Office will consider and respond at earliest possible (on the day after the day of receiving the requests).

Complimentary Closing.

110. (SBU) Below please find the text of a draft Mission Vietnam note to the GVN:

Complimentary opening. (Embassy Hanoi/ConGen HCMC) has the honor to refer to diplomatic note 35/NG-LS dated January 30, 2007. The Consulates General of the United States and the Socialist Republic of Vietnam in Ho Chi Minh City and San Francisco, respectively, operate on the basis of an interim understanding concluded in 1997 and, per the February 12, 1997, letter from Charge Desaix Anderson to Assistant Minister Bui Hong Phuc, "that this interim accord shall remain in force unless and until our two countries consider a more permanent arrangement that might further strengthen mutual consular relations."

Under this understanding, the Consulate General of the United States in Ho Chi Minh City carries out its functions from Thua Thien (Hue) and southwards pending a promised extension of its official consular district to this area. The Consulate General shall continue to provide notification of travel on a timely basis so that, in accordance with the 1997 exchange, personnel "may perform official duties in the Thua Thien (Hue) Province and all Socialist Republic of Vietnam territory southward in the same manner as official duties performed in Ho Chi Minh City." Such official duties will include meetings with Vietnamese citizens including officials and private individuals, both of which are fully consistent with the 1963 Vienna Convention on Consular Relations.

Complimentary Closing. End Text.

111. (SBU) Please advise on the content and delivery of this draft

HANOI 00000239 004 OF 004

note. As noted above, a separate cable will include suggestions for Department consideration on a medium-term strategy to resolve the consular district issue.

MARINE